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in connection with the advertising scheme represented property and value, there was ample consideration for the notes.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. § 166.* 2 Va.-W. Va. Enc. Dig. 417.]

4. Contracts (§ 328 (1*))—Advertising Scheme—Defenses.—In an action for notes given for copyrighted advertising plan and goods and supplies to be used in connection therewith purchased pursuant to a contract which contained no provisions against sales to competitors of the buyer, the buyer will not be relieved from payment of the notes on the ground that he thought plaintiff treated him unfairly in selling a similar proposition to a nearby competitor, and that he understood the seller's salesman that no other similar advertising scheme would be placed within a radius of ten miles.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 1571-1580, 1583, 1584.* 3 Va.-W. Va. Enc. Dig. 455.]

5. Appeal and Error (§ 662 (1*))—Review—Record.—The appellate court must dispose of the case on the record as it comes up.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 2850.* 1 Va.-W. Va. Enc. Dig. 505.]

6. Contracts (§ 350 (1*))—Advertising Scheme—Evidence—Sufficiency.—In an action on notes given for the purchase price of copyrighted advertising scheme and supplies, evidence held to entitle plaintiff to a judgment.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 1819, 1822, 1823.* 3 Va.-W. Va. Enc. Dig. 459.]

Error to Circuit Court, Sussex County.

Action by the Brenard Manufacturing Company against C. M. Brown. Judgment for defendant, and plaintiff brings error. Reversed, and judgment ordered for plaintiff in Supreme Court.

M. G. Mason, of Sussex C. H., and *E. A. Kennedy*, for plaintiff in error.

J. N. Sebrell, Jr., of Norfolk, for defendant in error.

GEHL *v.* BAKER.

June 14, 1917.

[92 S. E. 852.]

1. Assumpsit, Action of (§ 20*)—Pleading—Waiver.—A plaintiff may either expressly or by implication, waive defendant's compliance with Code 1904, § 3286, providing that in an action of assumpsit no plea in bar shall be received or inquiry of damages made un-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

less defendant file with plea an affidavit denying plaintiff's claim, but judgment shall be taken for plaintiff for the amount claimed, or he may be estopped by his conduct from taking advantage of the terms of such section.

[Ed. Note.—For other cases, see Assumpsit, Action of, Cent. Dig. §§ 100-116.* 2 Va.-W. Va. Enc. Dig. 57, 58.]

2. Assumpsit, Action of (§ 20*)—Pleading—Waiver.—Where plaintiff's counsel, on being notified of continuance of an action of assumpsit because of illness of defendant's counsel, not only failed to object but gave his apparent consent to such continuance, he waived defendant's compliance with Code 1904, § 3286.

[Ed. Note.—For other cases, see Assumpsit, Action of, Cent. Dig. §§ 100-116.* 2 Va.-W. Va. Enc. Dig. 57, 58.]

Error to Circuit Court, Northampton County.

Action of assumpsit by N. V. Gehl against T. J. Baker. From judgment for defendant, plaintiff brings error. Reversed and remanded for new trial.

C. J. Collins and *Jas. E. Heath*, both of Norfolk, for plaintiff in error.

S. J. Turlington, of Accomack, *Otho. F. Mears*, of Eastville, and *Jno. T. Daniel*, of Cape Charles, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.